

# Transcript Redaction Procedure<sup>1</sup>

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## Notice to the Bar

Unless the court orders them sealed or otherwise restricted, all civil and criminal transcripts are available electronically to the public through PACER (Public Access to Court Electronic Records). Each party's attorney is therefore required to review a transcript to redact personal information covered by the Judicial Conference's privacy policy.

The best practice is to keep personal information out of the transcript in the first place. Please take this into account when questioning witnesses or making other statements in court. If information subject to this policy is mentioned in court, you may ask the judge to have it stricken from the record or partially redacted.

For additional information on redacting personal information, as required by the E-Government Act of 2002, see <http://www.ned.uscourts.gov/cmecf/> > "Notice of Electronic Availability of Case File Information."

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## Effective date

This procedure applies to all transcripts of proceedings ordered on or after March 13, 2007, regardless of when the proceeding took place.

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## Individuals responsible for reviewing the transcript

The following individuals are required to review the transcript for personal data that should be redacted:

- each party's attorney,
  - "standby counsel" assisting a *pro se* defendant, and
  - unrepresented parties.
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## Parts of the transcript that must be reviewed

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<sup>1</sup>This procedure supersedes the procedures established on January 24, 2004, as amended on June 24, 2004, February 9, 2005, November 10, 2005, and May 16, 2006, in conjunction with the court's participation in a pilot project conducted by the Administrative Office of the United States Courts regarding the electronic availability of civil and criminal transcripts in accordance with the Judicial Conference's March 2007 revised transcript redaction procedures. See [Director's memo](#) regarding revised transcript redaction procedures.

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The parts of the transcript that must be reviewed include:

- opening and closing statements made on behalf of the represented party,
- any statements made by the party, and
- the testimony of any witnesses called by the party.

**Note:** By Nebraska Judicial Council order, the District of Nebraska restricts access to voir dire transcripts pursuant to the E-Government Act. These transcripts are not available to the public remotely. Counsel of record and the court have remote access to the unredacted transcript, but members of the public may view the unredacted transcript only at the court's public terminal.

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### **Attorneys must file Notice to Request Redaction**

Within five business days after the court reporter or transcriber files the official transcript on CM/ECF, the court's electronic filing system, counsel must file a Notice of Intent to Request Redaction. If counsel does not file notice during the five-day period, the court will assume that redaction of personal data is not necessary, and will make the transcript electronically available to the public.

A Notice of Intent to Request Redaction is available on the court's Web site at <http://www.ned.uscourts.gov/forms/noticeintent.pdf>.

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### **Time to review the transcript**

After filing a Notice of Intent to Request Redaction, an attorney has 21 calendar days to file a redaction request under seal. The redaction request shall list the places in the transcript where the personal data to be redacted appears. During the 21-day period, the transcript is available for review or purchase from the clerk's office, but will not be made remotely electronically available to the general public.

The court may allow more than the 21-day period, for good cause shown.

During the 21-day period, or longer if the court so orders, attorneys may move the court for additional redactions to the transcript. The transcript will not be available through PACER until the court has ruled upon any such motion.

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### **Redacting personal data**

Personal data are to be redacted as follows:

- Social Security numbers should show only the last four digits.
- Birth dates should contain only the year of birth.
- Individuals known to be minors should be referred to with initials.
- Financial account numbers should be redacted to the last four digits.
- In criminal cases only, home addresses should reveal only the city and state of residence.

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### **Compensation of CJA Attorneys**

Attorneys appointed under the CJA are eligible for compensation for reasonable time spent complying with the redaction procedure and for reimbursement of related expenses. Examples of activities related to the procedure which could be covered include:

- the cost of obtaining the transcript,
- travel expenses to gain access to the transcript,
- time spent reviewing the transcript to determine the need for redaction,
- time spent and expenses incurred filing a notice of redaction,
- time spent on preparing and filing a redaction request, and
- time spent on motion practice relating to the transcript's redaction.

If a case involving a CJA representation has already been closed, and the original attorney (or standby counsel) is no longer available, a new attorney may be appointed under the CJA and compensated as outlined above. If the original appointed attorney is still available, but has filed a final voucher for the underlying case, the attorney may file a supplemental voucher for compensation.

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### **Questions**

Please direct all questions concerning this procedure to the Office of the Clerk. Dial 402.661.7350 or toll free at 1.866.220.4831 for Omaha. Dial 402.437.5225 or toll free at 1.866.220.4379 for Lincoln.



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

May 15, 2007

## MEMORANDUM

To: Judges, United States District Courts  
Judges, United States Bankruptcy Courts  
District Court Executives  
Clerks, United States District Courts  
Clerks, United States Bankruptcy Courts  
Federal Public/Community Defenders

From:

James C. Duff

A handwritten signature in cursive script that reads "James C. Duff".

RE:

REVISED TRANSCRIPT REDACTION PROCEDURES **(INFORMATION)**

The Judicial Conference's privacy policy for public access to electronic case files contains procedures for redacting personal information<sup>1</sup> from court filings that are electronically available to the public. At its meeting in March 2007, at the request of the Committee on Defender Services and on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference adopted revisions to the transcript redaction procedures to clarify which portions of the transcript should be reviewed and by whom. The revisions also addressed the Criminal Justice Act (CJA) panel attorney eligibility for compensation for the time spent in complying with the redaction procedures, and for reimbursement of related expenses. Lastly, the procedures were revised to clarify that they were not intended to create any private right of action.

Those courts that currently have transcripts of court proceedings available to the public in electronic format should follow the procedures set out below to ensure that the transcripts being made electronically available do not contain the protected personal information.

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<sup>1</sup> These items are: Social Security numbers, financial account numbers, dates of birth, names of minor children, and, in criminal cases, home addresses.

First, each party's attorney<sup>2</sup> is required to review a transcript for information that should be redacted under the Judicial Conference's privacy policy: Social Security numbers should be redacted to show only the last four digits; birth dates should contain only the year of birth; individuals known to be minors should be referred to with initials; and financial account numbers should be redacted to the last four digits. Additionally, in criminal case files, home addresses should reveal only the city and state of residence.

Second, within five business days of a court reporter's delivery of the transcript to the clerk of court, an attorney must file a notice with the court of his or her intent to request redaction of such information from the transcript. An attorney is responsible for reviewing the opening and closing statements made on behalf of the party he or she represents, any statements made by the party, and the testimony of any witnesses called by the party. If no notice is filed during this five-day period, the court may assume that redaction of personal data is not necessary, and may make the transcript electronically available to the public. An attorney serving as "standby counsel" to assist a *pro se* defendant in his or her defense has the same responsibilities as if he or she were the *pro se* party's attorney of record in the case.

Third, once an attorney has filed a notice of intent to request redaction, he or she has 21 days to review the transcript and submit to the court reporter or transcriber a list of the places in the transcript where the personal data to be redacted appears. A court may order this time extended, for good cause shown. The court reporter or transcriber must redact the identifiers, as directed by the party. Also during this time period, an attorney could, by motion, request that additional information be redacted. No remote electronic public access to the transcript is to be allowed until the court has ruled on any such motion.

Fourth, attorneys appointed under the CJA are eligible for compensation for reasonable time spent complying with the redaction procedures and for reimbursement of related expenses. Examples of activities related to the procedures which could be covered include: (1) the cost of obtaining the transcript; (2) travel expenses to gain access to the transcript; (3) time spent reviewing the transcript to determine the need for redaction; (4) time spent and expenses incurred filing a notice of redaction; (5) time spent on preparing and filing a redaction request; and/or (6) time spent on motion practice relating to the transcript's redaction.

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<sup>2</sup> Or, in the case of an unrepresented party, the party should perform the tasks these procedures assign to the attorneys.

Fifth, in the event that a case involving a CJA representation has already been closed, and the original attorney (or standby counsel) is no longer available, new counsel may be appointed under the CJA and compensated as outlined above. In the event that the original appointed counsel is still available, but has filed a final voucher for the underlying case, the attorney shall be permitted to file a supplemental voucher for compensation.

Although the redaction procedures are sound, it is the Court Administration and Case Management Committee's strong belief that the best method of preventing harmful disclosure of personal data identifiers through transcripts is to alter courtroom behavior so that the unnecessary information is simply not elicited in the proceeding. To that end, the Committee has asked the Federal Judicial Center (FJC) to educate court personnel and judges about the need to keep personal information covered by the privacy policy out of the court record unless necessary to prove an element of the case. Additionally, the FJC has created a "model advisory" that a judge might wish to read at the start of a hearing to inform the participants of the potential future internet-based availability of a transcript of the proceeding, and of precautions they should take. That advisory, entitled "Safeguarding Personal Information in Electronic Transcripts," is available at: <http://cwn.fjc.dcn/>.

Finally, it is important to emphasize that the Court Administration and Case Management Committee is committed to ensuring that the courts' electronic case files are complete, including transcripts of proceedings. At its upcoming meeting, the Committee will consider recommending to the Judicial Conference some potential changes to help streamline and simplify the redaction procedures. The general tenets of the redaction procedures relating to CJA coverage, as outlined in this memorandum, are not, however, expected to change.

If you have any questions about the redaction procedures, please contact Susan Del Monte, Attorney Advisor, Court Administration Policy Staff, at 202-502-1560 or via email at [Susan\\_Del\\_Monte/DCA/AO/USCOURTS](mailto:Susan_Del_Monte/DCA/AO/USCOURTS).

cc: CJA Panel Attorney District Representatives